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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,412	07/28/2001	Lan Ngoc Vu	JWO003-00	7641

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EXAMINER

POLLACK, MELVIN H

ART UNIT PAPER NUMBER

2145

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/917,412	NGOC VU, LAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Melvin H. Pollack	2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>see attached office action</u> .       |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 14 October 2005 have been fully considered but they are not persuasive. An analysis of the arguments is provided below.
2. The examiner argues re the 112 rejection that claims 3 and 4 are different embodiments of the invention (P. 1, lines 9-20). Assuming arguendo that this is the case, the applicant is incorrect that the mention of a first and third client requires a second client P. 1, lines 21-24). The usage of an ordinal number as an adjective modifier indicates that there be a certain number of that item, and a gap in ordinal counting does result in ambiguities regarding the gap. Therefore, the applicant must amend claim 4 to indicate a second client (P. 1, lines 24-30).
3. The examiner must consider every part of the claim during consideration. Therefore, he is not allowed to state, in the record, that any particular amendment will not result in any narrowing of the scope (P. 1, lines 31-39). The applicant must amend due to the ambiguities of the claim language.
4. In response to applicant's arguments, the recitation "system for multi-tier multi-casting (P. 2, lines 1-5)" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

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5. The applicant argues that Huang does not expressly disclose multi-casting (P. 2, lines 6-11) in its updating process (P. 2, lines 12-18). Huang teaches three processes of updating: client request (Fig. 2, #205, further defined in Fig. 4, #403 and Fig. 5), proxy update (Fig. 2, #206, further defined in Fig. 4, #404 and Fig. 6), and dynamic update (Fig. 2, #207, as further defined in Fig. 8). The examiner uses the method of the dynamic update, wherein a server pushes the updates to the next layer (col. 5, lines 15-30) and thus multicasts the changes to multiple members of the next layer (col. 9, lines 10-55). Thus, the method of multicasting, while not using the particular phrase, is clearly taught when compared to the given definition.

6. In response to applicant's argument that Huang does not expressly disclose "maintaining local synchronicity with a continuously changing content stream (P. 2, lines 31-39)," a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

7. That said, the purpose of the dynamic updating procedure is to update time critical data such as stock tickers (col. 8, line 55 – col. 9, line 20).

8. Therefore, the rejection is maintained for the reasons above, and is therefore made final.

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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10. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Claims 4 recites the limitation "a third client" in line 2. There is insufficient antecedent basis for this limitation in the claim. Claim 1 recites a first client, but not a second client. The gap between the ordinance identifiers for clients would lead one of ordinary skill in the art to question the aspects of a second client, and thus would lead into ambiguities in system configuration. The examiner is required to add a second client and/or change the third client into a second client. For the purposes of this action, the examiner will assume that the third client is the second client, said client being directly connected to the first client server.

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Huang et al. (6,292,835).

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14. For claims 1 and 5, Huang teaches a method and system (abstract) for multi-tier multi-casting via a public communication network (col. 1, line 1 – col. 3, line 25), comprising:

- a. A content server (Fig. 1, #108) adapted to multi-cast predetermined content (col. 4, lines 3-5) via the public communication network (Fig. 1, #111), wherein the content server comprises a first tier (Fig. 1; S);
- b. A first client server (Fig. 1, #105) adapted to receive the content multi-cast by the content server via the public communication network (col. 4, lines 20-30), and to multi-cast the received content (col. 4, lines 28-45) via a first private communication network (Fig. 1, #110), wherein the first client server comprises a second tier (Fig. 1; P); and
- c. A first client (Fig. 1, #101) adapted to receive the content multi-cast by the first client server via the first private communication network (col. 4, lines 28-45).

15. For claims 2 and 6, Huang teaches that the method and system further comprises:

- a. A second client server adapted to receive the content multi-cast by the content server via the public communication network, and to multi-cast the received content via a second private communication network, wherein the first and second client servers comprise said second tier (col. 4, lines 18-21); and
- b. A second client adapted to receive the content multi-cast by the second client server via the second private communication network (Fig. 1, #102).

16. For claim 3, Huang teaches a third client adapted to receive the content multi-cast by the second client server via the second private communication network (Fig. 1, #103).

17. For claim 4, Huang teaches a fourth client adapted to receive the content multi-cast by the first client server via the first private communication network (Fig. 1, #104).

***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. They comprise dictionary definitions of related terms such as multicasting, broadcasting, and point-to-point connections.

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin H. Pollack whose telephone number is (571) 272-3887. The examiner can normally be reached on 8:00-4:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MHP  
12 December 2005



JASON CARBONE  
SPE 2145